IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.372 OF 1993.

State of Maharashtra : Appellants.

versus

Shahaji Khanderao Jadhav : Respondent.

ALONG WITH

FIRST APPEAL NO.373 OF 1993

State of Maharashtra : Appellants.

versus

Pundalik Gangaram Jadhav & ors. : Respondents.

ALONG WITH

FIRST APPEAL NO.374 OF 1993

State of Maharashtra : Appellants.

versus

Shri Kedu Mahadu Pawar since
deceased through his Legal Heirs
Sopan Kedu Pawar & ors. : Respondents.

Mr.S.N.Gawade, AGP, for the State.

None for the respondents.

CORAM : D.G.DESHPANDE,J.

DATED : 7th June 2005.

ORAL ORDER

1. All the three appeals have been filed by the State against the common judgment passed by the Joint District Judge, Nashik in Land Acquisition Reference Nos. 137/87, 138/87 and 139/87.

2. In L.A.R.No.137/87 Shahaji Khanderao Jadhav was the claimant. His land admeasuring 5.03 hectares out of the total area of 11.48 hectares was acquired.

. In L.A.R.No.138/87 Pundalik Gangaram and Pandharinath Gangaram were the claimants. Their land admeasuring 3.85 hectares out of the total land of 6.31 hectares was acquired.

. In L.A.R.No.139/87 Kedu Mahadu Pawar was the claimant . His land admeasuring 1.71 hectare including 0.13 pot-kharaba land out of the total

land of 10.10 hectares was acquired .

3. All these lands were acquired by the Government vide notification under section 4 of the Land Acquisition Act dated 22nd September 1981 but published on 15th October 1981. The SLAO fixed price of their lands by dividing the lands into three categories i.e. Rs.10,000/- per hectare for dry crop land, Rs.15,000/- per hectare for irrigated land and Rs.200/- per hectare for pot-kharaba land.

4. Being aggrieved by inadequate compensation awarded, the claimants were filed three different references which came to be decided by the Reference Court by common order. The Reference Court disregarding the classification of dry crop land and irrigated land awarded Rs.20,000/- per hectare though the compensation awarded to pot-kharaba land was not disturbed. Hence these appeals by the State.

5. Learned AGP for the State pointed out from the judgment that so far as case of Pundalik Gangaram and Pandharinath Gangaram in LAR No.138/87 is concerned, the Reference Court

rejected their case that their land was irrigated land. 7x12 extract do not support the case of the claimants and mere production of electricity bill pertaining to electric motor fitted to the well was not found sufficient to come to any conclusion that a particular portion of the acquired land was irrigated. The Reference Court specifically concluded that Gat No.57 was a dry land and in any case the complete land of Gat No.57 was not at all irrigated.

6. The Court also disbelieved the sale instances produced by the claimants vide Exhibits 10 and 26 holding that sale instance Exhibit 10 was not applicable to the present case. The Court came to the conclusion that witness Babu Jadhav, who had come to prove Exhibit 10 was fully exposed in the cross examination. The Court also concluded that there was a well in the part of the land measuring 21 R which the Babu purchased, therefore, the purchaser might have not using the facility of irrigation.

7. But even then after coming to such conclusion on the evidence and holding against the claimants, the Court in para 14 of the

judgment awarded Rs.20,000/- per hectare for all the acquired lands from the claimants.

8. This compensation of Rs.20,000/- per hectare is fixed without there being any basis and even after rejecting the case of the claimants fully on all counts. The entire evidence of the claimants was discussed by the Court and has rejected as stated above. But even then without any rhyme or reason, the price of the land was fixed at Rs.20,000/- per hectare. There was absolutely no justification in doing so. If the claimants have failed to prove that their lands were irrigated or have failed to prove that any part of the lands was irrigated and, also have failed to prove the sale instance or applicability of the sale instance to the facts of the present case, then the Reference Court was not at all justified in enhancing the compensation. No other document nor any circumstance was considered in favour of the claimants for enhancement. Therefore, when on one hand the Court rejects all the claims and contentions of the claimants, but cannot on the other hand enhance the compensation. Therefore,

this is a fit case where the appeals are required to be allowed. Hence the order :-

:ORDER:

The appeals are allowed.

The enhancement of compensation awarded by the Reference Court in the impugned order is quashed and set aside.

The claimants will be entitled to the compensation as was awarded by the SLAO.

If the claimants have received the amount of the compensation awarded by the Reference Court, they will return the said amount to the State Government within six weeks from today. If they fail to do so, they will be liable to return the amount with interest at the rate of 6% p.a.

No order as to costs.

[D.G.DESHPANDE]

07/06/2005 JUDGE.